IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 6 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AJENDRAPRASAD NARENDRAPRASAD PANDEY - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR YN OZA SR. COUNSEL FOR IH SYED for Applicant(s) : 1,
MR AY KOGJE APP for Respondent(s) : 1,
MR ND NANAVATI SR COUNSEL FOR MR HARIN P RAVAL for Resp.1

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 19/04/2006

CAV JUDGMENT

1. The petitioner by way of filing this petition under Article 226/227 of the Constitution of India has prayed to issue appropriate writ, order or direction to quash and set aside the arrest warrant issued against the petitioner under Section 70 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr. P.C.”)

by the learned Metropolitan Magistrate, Ahmedabad, in the offence registered as I – CR No. 5/2005 by D.C.B. Police Station, Ahmedabad.

2. The facts disclosed from the record of the case are as under :

i. On 15-2-2005 a complaint was lodged by Bharatkumar Amrutlal, P.S.I., Crime Branch, Ahmedabad before D.C.B. Police Station, Ahmedabad against one Bhanubhai alias Bhanubhagat Nanjibhai Patel and nine other persons for alleged commission of the offences punishable u/s 292, 294, 295, 120B and 420 of the I.P. Code and u/s 67 of the Information Technology Act and u/s 5 and 9 of the Immoral Traffic(Prevention) Act, 2000 alleging that the accused persons hatched a criminal conspiracy for preparation and circulation of Compact Discs (CDs) which exposed the misdeeds of the Sadhus of Swaminarayan Sect in Swaminarayan temple; that the Sadhus have defamed the religion and exploited women by videographing sexual acts committed by the Sadhus on the pretext of performing religious ceremonies; that the Video CDs have been prepared by the accused persons and they have circulated the same in Ahmedabad and

other places for the public. On the basis of this complaint offence was registered as I CR No. 5/2005 by D.C.B. Police Station, Ahmedabad against the persons named therein. Another complaint was lodged by Dharmapriydasji of Vadtal Swaminarayan temple before Chaklasi Police Station, Dist. Kheda which was registered as I CR No. 4/2005 for the offences punishable u/ss 153A, 153B, 294, 295A, 120B of I.P. Code as well as u/ss 5A, 5B and 9 of the Immoral Traffic (Prevention) Act, 1956. The complaint lodged by Swami Dharmapriyadasji was investigated and some of the accused were arrested. The petitioner has averred that with reference to the present complaint lodged with D.C.B. Police Station, Ahmedabad charge-sheet was filed against the arrested persons and the petitioner. Though the petitioner was not named in the F.I.R. with an intention to rope the petitioner his name was shown in 2nd column of the charge-sheet filed on 12-5-2005 in the court describing him as “absconding”. As the petitioner was not available and absconding the Investigating Officer made an application on 10-8-2005 before the learned Metropolitan Magistrate at Ahmedabad to issue non-bailable warrant against the petitioner. The learned Metropolitan Magistrate issued arrest

warrant u/s 70 of the Cr. P. C. against the petitioner on 11-8-2005. It is the case of the petitioner that some of the “Sadhus” of Swaminarayan Sect have hatched a criminal conspiracy to rope the petitioner in criminal matters by implicating him in false cases. The petitioner is not named in any of the complaints. When the present complaint was filed, the petitioner was busy in pursuing civil matters from 10-1-2005 in the Hon'ble Supreme Court. The petitioner was present before this Court in the proceeding of Misc. Criminal Application No. 223 of 2005. Therefore, non-bailable warrant could not have been issued on the ground that he was absconding.

ii. It is further averred that when the petitioner was in Thane he was granted transit bail to enable him to approach the competent court at Nadiad for obtaining anticipatory bail u/s 438 of the Cri. P. C. A copy of the said order was served to the police station at Nadiad on 3-10-2005. But the police intentionally neither arrested the petitioner nor called him for interrogation in respect of this complaint. The petitioner filed an anticipatory bail application before Nadiad Court but the same was rejected.

Thereafter, the petitioner approached this Court for anticipatory bail but the same was withdrawn on 29-12-2005 with liberty to file fresh application. The petitioner has remained present before various courts through his counsel while pursuing legal remedies. Therefore, the petitioner was very much available and there was no reason for the police to ask for arrest warrant against the petitioner. The learned Metropolitan Magistrate was not justified in issuing non-bailable warrant on the basis that the petitioner was absconding.

iii.It is further averred that Mr.N.K.Amin, A.C.P., D.C.B. Police Station wrote a letter to the Chairman of Shree Swaminarayan temple, Vadtal informing that the petitioner is one of the main accused and yet to be arrested. This conduct shows the intention of investigating agency that prior to filing of charge-sheet, the Chairman of the temple was informed about the development in investigation which is normally not revealed by the investigating agency.

iv.According to the petitioner, the non-bailable warrant has been obtained by the Investigating Agency to cause

damage to the public image of the petitioner and to harass him. The learned Metropolitan Magistrate has passed the impugned order without proper application of mind and therefore the order of issuance of non-bailable warrant against the petitioner should be set aside.

3. The petitioner has also filed a similar petition challenging the order of issuance of non-bailable warrant issued by learned Judicial Magistrate (First Class) at Nadiad in the offence registered as I-CR No.4/2005 by Chaklasi Police Station, Dist. Kheda. As both the petitions involve common question of law and as the facts are similar, with the consent of learned counsels of the parties both the matters were heard together.

4. With the consent of learned counsels of the parties, the matter is heard finally. I have heard Mr. Yatin Oza, learned Sr. Counsel for Mr. Syed for the petitioner, Mr. Nanavati, Sr. Counsel and Mr. Harin P. Raval for the original complainant as well as learned A.P.P. Mr. Kogje for the respondent – State at length on different days.

5. Learned Sr. Counsel Mr. Oza appearing for Mr. Syed

learned advocate for the petitioner submitted that the petitioner is not named in the F.I.R and no charges are levelled against him. Even after obtaining the transit bail and serving the order to the concerned authority, the petitioner was not interrogated. This conduct of the Investigating Agency indicates that the investigation is being conducted with a view to harass the petitioner. He also submitted that the petitioner never absconded and had pursued the legal remedies through his counsel in various courts and in one of the courts, the petitioner himself had remained present, however, the investigating agency did not arrest the petitioner. He further submitted that the learned Magistrate has not applied his mind before passing the impugned order and has not exercised the power properly. He submitted that the arrest warrant cannot be issued in aid of the investigation and no undated arrest warrant can be issued. Therefore, the impugned order requires to be quashed and set aside. It is also submitted by the learned Sr. Counsel for the petitioner that the learned Magistrate has erred in straight way issuing the arrest warrant u/s 70 of the Cr. P. C. as no summons u/s 160 of the Cr. P. C. was issued against the petitioner. Therefore, the impugned order is required to be set

aside. In support of his submissions learned Sr. Counsel Mr. Oza has relied on numerous decisions.

6. Mr. Syed learned advocate for the petitioner was also permitted to make submissions on the question of facts of the case.

7. Mr. A.Y. Kogje, learned A.P.P. for the respondent – State submitted that as the alternative remedy is available to the petitioner, writ petition under Article 226/227 of the Constitution of India would not lie and therefore the present petition should be dismissed. He also submitted that the Learned Magistrate after satisfying himself has passed the impugned order issuing the arrest warrant against the petitioner u/s 70 of Cr. P. C. as the petitioner was not available. He also submitted that summons u/s 160 of the Cr. P. C. is not required to be served to an accused before issuance of arrest warrant u/s 70 of the Cr. P. C. The police has power to arrest any accused – person u/s 41 of the Cri. P. C. and therefore, no error is committed by the learned Magistrate in passing the impugned order. He has relied on the decision in the case of State through C.B.I. Vs. Dawood Ibrahim Kaskar and others, reported in

AIR 1997 SC 2494.

8. It transpires from the averments made in the petition that the petition involves highly disputed questions of fact, such as whether the petitioner was absconding or not and whether the petitioner was available for interrogation or not? Such disputed questions of fact cannot be gone into in the petition filed under Articles 226/227 of the Constitution of India. Moreover, an alternative and efficacious alternative remedy is available to the petitioner under Cr. P. C. i.e. to approach the trial Court which has issued the non-bailable warrant and to pray for cancellation of the non-bailable warrant issued against him. Another alternative and efficacious remedy is also available to the petitioner to challenge the order of issuance of non-bailable warrant by way of filing revision. As the alternative and efficacious remedy is available to the petitioner under Cr. P. C. this petition cannot be entertained and the same is liable to be dismissed.

9. It can be seen from the record of the case that impugned order is passed by the learned Magistrate on

11.8.2005 and this petition is filed on 3rd January 2006 i.e. after almost about four months. It is well settled that power of High Court to issue an appropriate writ under Article 226/227 of the Constitution of India is discretionary and it cannot be claimed as a right. If the relief claimed is relating to the enforcement or protection of fundamental right, the Court has to grant it when infringement of such right is established, but, if the relief is claimed for any other purpose, it is discretionary tog-rant or to refuse such relief. Delay is one of the grounds for refusing the discretionary relief under Article 226/227 of the Constitution of India. If the petitioner wants to invoke the extra ordinary remedy, he should have come to the Court at the earliest opportunity. Delay in resorting to such remedy will be a good ground for refusing to exercise the discretion. The petitioner has not given any explanation with regard to the delay. Therefore, on the ground of delay itself, the petitioner is not entitled to discretionary relief under Article 226/227 of the Constitution of India.

10. Mr. Oza, learned Sr. Counsel submitted that the arrest warrant in Form No. 12 of Schedule-II of the Cr.

P. C. was issued which can be issued against a person who is “charged with the offence” and as “the charge is not framed” against the petitioner no arrest warrant could have been issued u/s 70 of Cr. P.C. However, subsequently he made a statement at the Bar that he does not press this contention. In view of his statement, this submission is not required to be considered.

11. It is submitted that the petitioner was not served with the summons u/s 160 of the Cr. P. C. and called upon to appear before the Police Officer as required u/s 160 of Cr. P. C. therefore warrant u/s 70 of the Cr. P. C. could not have been issued. This submission has also no substance.

12. Section 160 of the Cr. P. C. confers powers upon the police Officer who requires the attendance of the person before him who appears to be acquainted with the facts and circumstances of the case. Therefore, Section 160 of Cr. P.C. refers the attendance of the witnesses. In the present case, the petitioner is not a witness but is an accused. Even the averments made in the application disclose that he is an accused and not a witness. During the course of investigation the statement of the accused

may be recorded and such statement cannot be equated with the statement of the witness acquainted with the facts and circumstances of the case.

13. It is not the case of the petitioner that he is acquainted with the facts and circumstances of the case and hence he should be treated as a witness and not an accused. Therefore, looking to the facts of the case, the provision of Section 160 of Cr.P.C. are not applicable to the present case. The scheme envisaged by Cr.P.C. Is that in the circumstances enumerated in Sec.41 of the Code a Police Officer has power to arrest a person without warrant. However, in other cases during investigation if it transpires that an accused is keeping away or is absconding and that his presence cannot be secured otherwise then by executing a warrant issued by a competent court, the Police Officer has to obtain order from the competent court. Sufficient guidelines have been laid down in the Code as to in which circumstances the Court shall issue a warrant of arrest of a person who is absconding or keeping away and not co-operating in investigation. Process to compel appearance contemplated by Chapter-VI of the Code can be resorted to by the Police Officer concerned even if charge sheet is not

filed. In this case, charge-sheet is already filed and the petitioner is shown as absconding accused. It is averred that identical complaints have been filed with reference to the same incident. The charge-sheet is filed in this offence. If it transpires that the charge-sheet which is filed with regard to this offence has served the purpose another charge sheet with regard to the offence registered as I – CR No. 4/2005 at Chaklasi Police Station may not be filed if I.O. Comes to the conclusion that commission of offence other than the offences mentioned in I-C.R. No.5/2005 is not disclosed. Therefore, this argument can not be accepted.

14. It is also a submission of the learned Sr. Counsel for the petitioner that the petitioner is not named in the compliant on the basis of which the offence is registered as I. CR No.5 of 2005 with DCB Police Station, Ahmedabad and therefore warrant u/s 70 of the Cr. P.C. could not have been issued against the petitioner. It is not necessary in all the cases that the person who is not named in the F.I.R. or complaint cannot be prosecuted. Purpose of the investigation is to find out whether person/s named in the F.I.R. as well as others named has/have committed offences mentioned in the

complaint/F.I.R.. If during the course of investigation the investigating agency finds that over and above the person named in the complaint, the other persons are involved in the commission of the offence, Police has authority and power to proceed against the person/s who is/are not named in the complaint/F.I.R. Therefore, even if the petitioner is not named in the F.I.R./complaint if the material is found against him during the investigation he could be prosecuted for the commission of the offence. The submission that the petitioner is not named in the F.I.R./compliant and therefore no warrant could be issued against the petitioner, cannot be accepted.

15. Another point urged by the learned Sr. Counsel Mr.Oza is that the petitioner was not absconding, but he was always available for interrogation and ready to cooperate with the investigating agency and therefore no non-bailable warrant could be issued against the petitioner. The petitioner has failed to satisfy this Court that after obtaining transit bail from Thane Court he had presented himself before the Police and had extended all cooperation to the the investigating agency. It is significant to note that the petitioner was aware

about the fact that the complaint being CR No. I – 5 of 2005 was registered against him and his presence was required in connection with the said offence. However, after obtaining the transit bail, the petitioner never presented himself before the Police Officer for interrogation. Normally, non-bailable warrant would be issued by the Court after being satisfied that the accused – person against whom non-bailable warrant is issued, is absconding. Therefore, this submission has no force and hence cannot be accepted.

16. The petitioner has attempted to show that he was not absconding and was always available to the police for interrogation. As observed earlier, the question whether the applicant was absconding or available for interrogation is highly disputed question of facts. Such question of fact cannot be gone into in the petition filed under Articles 226/227 of the Constitution of India and therefore no relief can be granted to the petitioner on the basis that he was not absconding and was available for interrogation and therefore no non-bailable warrant could be issued. Mr. Oza, learned Sr. Counsel for the petitioner placed reliance on the unreported judgment dated 2-12-2004 delivered by this Court (Coram : C.K. Buch, J.) in Cri. Misc. Application

No. 8912 of 2004 filed u/s 482 of the Code of Criminal Procedure. Natvarlal Prabhudas Patel – applicant of that application had filed the application for quashing the proceedings u/s 482 of the Code of Criminal Procedure, 1973. The said decision is relied upon with a view to bring home the point that if an accused – person has remained present before the Court in various proceedings he may not be termed as an absconding accused. On going through the said decision, it appears that the said application was filed for quashing the charge sheet filed against the petitioner. One of the grounds urged by the learned A.P.P. in the said proceedings was that the accused was absconding and therefore quashing application should not be entertained. It was the case of the applicant that he remained present before the courts in various proceedings and therefore he could not have been termed as an absconding accused. While deciding the point whether the accused was absconding. the learned Single Judge held that in order to victimize and to settle the score it was mentioned in the charge sheet that the applicant was absconding.

17. In the present case, the petitioner has failed to establish that the prosecution launched against him is

mala fide. It is also stated by the learned A.P.P. that the petitioner had filed a petition for quashing the complaint but he had withdrawn the same with liberty to file a fresh petition. However, till the date, no such petition has been filed. In view of this fact, the aforesaid decision of this Court (Coram : C.K. Buch, J.) relied upon by the learned Sr. Counsel for the petitioner is not applicable in the present case.

18. As observed earlier, whether the accused person is absconding or not is a complex question of fact and such question of facts has to be determined on the basis of the facts laid and evidence adduced before the Court. Merely because, on the facts of the case of Cri.M.A. No.8912 of 2004 the learned Single Judge has taken a view that the applicant was not absconding, in the present case it cannot be held that the petitioner was not absconding. Therefore, the petitioner has failed to make out a case that he was not absconding and was always available for interrogation.

19. It is also submitted by the learned Sr. Counsel advocate for the petitioner that the learned Magistrate has without application of mind and without going

through the record of the case and without assigning reasons mechanically passed the impugned order. It is submitted that no undated non-bailable warrant could have been issued and therefore, the impugned order is liable to be quashed and set aside. He has relied on the following decisions.

i. In the case of State of Gujarat Vs. Charulata B. Patel and others, delivered in Civil application No. 9161 of 2003 in Letters Patent Appeal NO.1342 of 2003.

ii. In the case of Ghanchi Rubina Salimbhai Vs. Metubha Diwansingh Solanki and others, reported in 2003 AIR SCW 3782.

iii. Shri R.M. Solanki Vs. State of Gujarat in Criminal Revision application No. 129 of 2006 (Coram Akshay H. Mehta, J.)

iv. G. Sagar Shri Vs. State and anothers reported in 2004 Cr.L.J. 212.

20. On perusal of the impugned order, it transpires that the learned Magistrate has considered the facts and

circumstances of the case and the material on record and then passed the impugned order. From the record of the case it is clear that a detailed application was submitted by the Police Officer praying to issue warrant u/s 70 of the Cr. P.C. The reasons why issuance of warrant was claimed were mentioned therein. The learned Magistrate has after considering the contents of the application has passed the order. It was not necessary for the learned Magistrate to reiterate and restate the reasons mentioned by the police officer in the application while passing the impugned order. Reproduction of reasons in the application in the order would have been duplication which is avoided by the learned Magistrate. Law does not expect the learned Magistrate to reiterate and restate the reasons given in the application while passing the order. Therefore, the plea raised by the petitioner cannot be accepted and is hereby rejected.

21. In my view, the decisions relied on are not applicable to the facts of the present case. In all these judgments the Courts have held that the court is required to assign reasons while reaching to a conclusion. As discussed earlier, the learned Magistrate

has in his order assigned the reasons for passing the order and observed that he has read the contents of the application, heard learned A.P.P. and considered all the materials. The learned Magistrate has considered the material before reaching to the conclusion. Therefore, it cannot be said that the reasons are not assigned by the learned Magistrate while passing the impugned order and therefore the order is without application of mind. Furthermore, this is a warrant issued u/s 70 of the Cr. P.C. and not proclamation u/s 82 of the Cr. P.C. where the date has to be mentioned. Therefore, contention that the date before which the petitioner is to be arrested is not mentioned in the warrant u/s 70 of the Cr. P.C. and therefore it should be set aside cannot be accepted.

22. Mr. Oza, learned Sr. Counsel for the petitioner also relied on the decision of the Hon'ble Supreme Court in the case of **State through C.B.I. Vs. Dawood Ibrahim Kaskar and others, reported in AIR 1997 Supreme Court 2494** and contended that the warrant u/s 70 of the Cr. P.C. is issued by the leaned Magistrate solely for the purpose of production of the petitioner before the police in aid of investigation and therefore the non-bailable

warrant issued against the petitioner should be quashed and set aside.

23. Such submission made by the Sr. Counsel on behalf of the petitioner is misplaced. In the decision, after examining the scheme of Sections 73, 167 and 309 (2)of Cr. P. C. the Hon'ble Supreme Court has explained that Section 70 of the Cr. P. C. is of general application and in the course of investigation the Court can issue warrant in exercise of the power therein to apprehend the person who is accused of a non-bailable offence and is evading arrest. The record does not show that the non-bailable warrant has been sought and issued against the petitioner for his production before the police in aid of the investigation. The application moved by the investigating agency does not indicate that the presence of the petitioner is required for interrogation. On perusal of the copy of the application moved by the Investigating Agency produced on record of this case, it transpires that charge sheet is already filed and the petitioner is shown as absconding accused. It also indicates that the petitioner is evading arrest with a view to avoid trial. In view of this, it cannot be said that the warrant was issued in the aid of investigation.

After the non-bailable warrant is executed the competent court may either release the petitioner on bail or authorize his detention in custody. Under Section 167 of the Cr. P.C. if the investigating agency makes prayer for police custody of the petitioner, the same will have to be considered in accordance with the principles laid down by the Hon'ble Supreme Court. However, it is incorrect and wrong to contend that the learned Magistrate has issued the non-bailable warrant solely for production of the petitioner before the police in aid of the investigation. Hence, the non-bailable warrant issued by the learned Magistrate against the petitioner is not liable to be quashed and set aside. Therefore, the said decision cannot be made applicable to the facts of this case.

24. Learned counsel for the petitioner also relied on the decision of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Ramdas Shrinivas Nayak and another, reported in AIR 1982 SC 1249** and contended that there is no mention in the impugned order as to which material the learned Magistrate has perused while passing the impugned order. In my view the learned Magistrate has stated in his order that he considered the contents

of the application, heard the learned A.P.P. and considered the materials and hence it can be presumed that he perused the relevant record for the purpose of passing the impugned order and therefore it cannot be said that the order was passed without going through the record. In the judgment the Hon'ble Supreme Court has observed that **“if the Judges say in their judgment that something was done, said or admitted before them, that has to be last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence.”** In view of these observations of the Hon'ble Supreme Court, the petitioner cannot be permitted to say that the impugned order was passed by the learned Magistrate without going through the material produced before him.

25. Learned Sr. Counsel for the petitioner has relied on the decision of the Supreme Court in the case of **Chander Kuer and others Vs. Emperor reported in A.I.R. 1941 Patna 206** in respect of the power of the Court to issue warrant of arrest, wherein the Hon'ble Supreme Court has held

that **“Issue of warrant of arrest under S.90 (b) depends on due service of summons”.** Looking to the facts and circumstances of the case, this decision is not applicable in the present case. In the decision of **Ahmed Ali V. State of Assam and others reported in 1990 Cri.L.J. 1041,** the same issue with regard to issuance of warrant in place of summons was involved. In my opinion, this decision is also not applicable in the facts of the present case.

26. Learned Sr. Counsel for the petitioner has also relied on the decision of this Court in the case of **P.K. Das Gupta and Ors Vs. Jaysukhlal Mahashanker & Anr, reported in 1983(2) G.L.R. 941,** wherein this Court has held that **“the Trial Court should use its discretion before exercising its powers of issuing warrants u/s 70 of the Code.”** In my view, this decision is also not applicable in the facts and circumstances of the case as the learned Magistrate has exercised the discretion and has assigned reasons in the impugned order.

27. Learned Sr. Counsel for the petitioner has relied on the decision of the Supreme Court in the case of **Union of India Vs. Hansoli Devi and Others reported in (2002) 7**

Supreme Court Cases 273 on the point of interpretation binding nature of a decision.

28. Learned Sr. Counsel for the petitioner has relied on the decision of the Supreme Court in the case of **Jayendra Saraswathi Swamigal Vs. State of T.N. Reported in (2005) 2 Supreme Court Cases 13.** This decision is with regard to grant of bail in case of non-bailable offences. In my view, in the present case, this is not the stage to evaluate and consider evidence of acts and statements made by one of the conspirators in furtherance of the common object. Therefore, this decision of the Supreme Court is not applicable to the facts of the present case.

29. Learned Sr. Counsel for the petitioner has relied on the decision of the Supreme Court in the cases of **T.T. Antony V. State of Kerala and Ors, reported in AIR 2001 Supreme Court 2637.** This decision is with regard to filing of the F.I.R. In this decision, the Supreme Court has held that **“There can be no second F.I.R. in respect of the same cognizable offence, same incident or occurrence.”** In my view, this aspect cannot be considered in these proceedings and therefore, this judgment is not applicable in the present case.

30. Learned Sr. Counsel for the petitioner has relied on the decision of this Court **(Coram : A.L.Dave,J.) rendered in Criminal Revision Application No. 414 of 2002 on 22-10-2002.** In my opinion, this judgment is also not applicable in the facts of the present case.

31. Learned Sr. Counsel for the petitioner also relied on the judgment of the Hon'ble Supreme Court in the case of **Surya Dev Rai Vs. Ram Chander Rai and others, reported in (2003) 6 Supreme Court Cases 675** and contended that the revision is not maintainable. This decision is in respect of Section 115 of the C.P.C. and jurisdiction of High Court under Article 226 and 227 after amendment in Civil Procedure Code. In my view, the said judgment is also not applicable in the present case as the petitioner has a right to challenge the order in revision under the provisions of Cr.P.C.

32. Learned Sr. Counsel for the petitioner also relied on the judgment of this Court (Coram : Akshay H. Mehta, J.) rendered on 3-3-2006 in Criminal Revision application No. 129 of 2006 whereby the learned Single Judge has quashed the order issuing the non-bailable

warrant u/s 70 of the Cr. P. C. on the ground that the order does not contain reasons. As observed earlier in this case, the learned Magistrate has assigned reasons in the impugned order, therefore, the said decision cannot be made applicable to the facts of this case. It is also necessary at this stage to observe that the said order was quashed in a revision application filed by the accused challenging the order of issuance of non-bailable warrant. Therefore, also the impugned order cannot be quashed in this proceedings.

33. Learned Sr. Counsel Mr. Nanavati for the complainant has relied on the decision of the Supreme Court in the case of Jagirsinh V/s. Ranbir Singh and another (AIR 1979 SC 381) wherein the Court held that the object of Sec.397(3) is to prevent a multiple exercise of revisional powers. In this case, the petitioner has not approached Sessions Court challenging the impugned order. Therefore, this judgment is not applicable to the facts of this case.

34. Mr. Nanavati has also relied on the decision of Madhu Limaye V/s. State of Maharashtra (AIR 1978 SC 47) on the same point of maintainability of revision

application. In my view, this decision is also not applicable to the facts of this case. He has also relied on the decision of Ganesh Narayan Hegde V/s. S. Banarappa and others (1996(1) GCD 310(SC) on the point of inherent powers of High Court U/s 482 of Cr.P.C. But this decision is also not applicable in the facts of this case.

35. As regards the contention that Mr. N.K. Amin A.C.P., P.I., D.C.B., Police Station wrote a letter to Chairman of Shree Swaminarayan temple, Vadtal informing about the developments in the investigation, the petitioner has not produced the letter on record of this case. Therefore, no inference can be drawn in that regard, therefore, the contention that investigation is being carried out with specific intention cannot be accepted.

36. It is significant to note that the petitioner had earlier filed a petition u/s 482 of the Cr. P.C. making a prayer to quash the complaint but the same is withdrawn with a liberty to file fresh application in view of alleged new developments in the case but no such petition is filed. It appears that the petitioner is trying to avoid arrest by abusing process of law.

3. In view of the above discussion, the petitioner has failed to make out case for quashing and setting aside the impugned order. Therefore, this petition fails and is accordingly dismissed. Rule stands discharged.

(BANKIM N. MEHTA,J.)

JVSatwara